IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14161 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPBHAI HARISHBHAI MAKWANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14161 of 2004

MR PF MAKWANA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 28/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. PF Makwana for the petitioner detenu and ld. AGP Ms. HP Punani for the other side.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 29.04.2004 passed by the Police Commissioner, Vadodara City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA ACt.

3. While passing the order of detention, the Detaining Authority & Police Commissioner, Vadodara City on 29.04.2004, has considered the fact of registration of three different offences punishable under the Bombay Prohibition Act between 23.11.2003 and 13.04.2004. On all these occasions, the petitioner detenu was found involved in the offence concerning the country-made liquor and it is alleged that the bootlegging activities of the petitioner detenu has potentiality to disturb the public health and public order. Registration of 3 offences within a span of six months and the allegations made by two witnesses whose statements have been recorded by the sponsoring authority, are referred as relevant grounds for passing the order of preventive detention. After registration of the last offence on 13.04.2004, the petitioner detenu was arrested on that very day and thereafter i.e. on the next day, statements of two witnesses have been recorded by the sponsoring authority on 14.04.2004. Witness No.1 has described the incident that had occurred at about 7.00 P.M. on 08.04.2004 and the second witness has also stated the details of the event that had occurred on 27.03.2004 at about 07.30 P.M. Area of the activities of the petitioner emerging from the facts appears to be Kishanwadi of city of Vadodara.

4. The order of detention is assailed on various grounds. However, ld. counsel Mr. Makwana appearing for the detenu has concentrated his arguments mainly on two points. The first point pressed into service by ld. counsel Mr. Makwana is that the statements of witnesses have been recorded on 14.04.2004 and 15.04.2004 respectively. However, these witnesses were not taken for verification before the Police Commissioner promptly and the statements have been verified after the lapse of about 13 to 14 days. This has caused delay in passing the order of preventive detention. This delay is required to be explained by the sponsoring authority and/or the detaining authority. In absence of

explanation, delay caused should be treated as fatal. It is settled legal proposition that the order of preventive detention should be passed promptly otherwise unreasonable delay in passing the order of detention would go to the root of the validity of the order. In support of his submission, ld. counsel Mr. Makwana has placed reliance on the decision of this Court in Spl.C.A. No.10182/2003 decided on 26.08.2003 (Coram: Hon'ble Mr.Justice J.R.Vora). It is not necessary to reproduce para-6 of the decision which has been relied on by ld. counsel Mr. Makwana. In the facts and circumstances of the present case, ratio of the above-cited decision squarely applies and so on this sole ground, impugned order of detention requires to be quashed and set aside.

5. The second and important point pressed into service by ld. counsel Mr. Makwana for the detenu is that the written representation made by the detenu has not been legitimately considered by any of the authorities. Representation if made, then the same should be considered in true spirit in light of the contentions that are placed before the authority concerned.

6. The ld. AGP Ms. Punani has clearly pointed out that at three different places the representation was sent by the father of the detenu and the same was entertained promptly and so, it is not true that representation has not been considered by the authorities concerned. According to ld. AGP Ms. Punani, none of the representations was found signed either by the father of the detenu or by the detenu. So, it was not possible for any of the authorities to consider the so-called representation. Unsigned document can not be said to be a valid representation and, therefore, the same was not considered. However, the detaining authority has acted cautiously and representation was sent to the concerned jail authority so that signature of the detenu can be obtained. So, according to ld. AGP Ms. Punani, the grievance expressed by ld. counsel appearing for the detenu as to non-consideration of the representation should not be accepted.

7. In response to the query raised by the Court, ld. AGP Ms. Punani after referring to the relevant file available to her, has fairly accepted that she is not aware as to whether what had happened to the representation that was sent for obtaining signature from the jail authority. Whether that representation has reached to the jail authority or whether it was received back by any of the three authorities, are the questions that can be answered if the appropriate record is

available and on account of non-availability of this part of record, she is not in a position to respond either way.

8. The court shall have to agree with the submissions advanced by ld. counsel Mr. Makwana for the detenu that even than unsigned document was considered in a correct way, authorities were still under obligation to see that the representation made is decided in its true spirit. When attempt was made to see that authority receives back signed representation from the jail authority so that it can apply its mind and decide the representation on merits, but this exercise has not been done by any of the authority. So, the say of the petitioner detenu requires to be accepted that the representation made by the father of the detenu has not been considered and this has violated privilege flowing from Articles 21 & 22(5) of the Constitution of India. So, on this ground also, the impugned order of detention requires to be quashed and set aside.

9. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 29.04.2004 passed by the Police Commissioner, Vadodara City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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